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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,727	11/08/2001	Jeffrey A. Welton	THE 0243 PUS	6142
46726	7590	11/28/2005	EXAMINER	
JOHN T. WINBURN 100 BOSCH BOULEVARD NEW BERN, NC 28562			PRICE, CARL D	
		ART UNIT		PAPER NUMBER
		3749		

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)
	10/008,727	WELTON ET AL.
	Examiner CARL D. PRICE	Art Unit 3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 09/14/2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-7 and 10-12 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-7 and 10-12 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claims

Claims 1-7 and 10-12 are pending.

Claims 8-9 and 13-14 have been canceled.

Applicant's arguments

Applicant's arguments with respect to claims 1-7 and 10-12 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims, by addition and deletion of language, to be of a scope not previously examined. In particular, consistent with applicant's argument that the prior art does not show and/or teach certain feature of the now claimed invention set forth in amended claims 1, 6, 7 and 12 which now include, for example:

- *“a base supporting said plurality of fingers around an opening through which gas flows between the interior of a counter top and said burner head, each of said fingers extending outwardly relative to said opening and having an interior that is not in communication with said opening such that, when said base is mounted in a fixed position with respect to a cooktop surface of the counter top, leakage of fluids between the interior of the counter top and the cooktop surface via flow of fluid through said opening and thereafter through said fingers of said base is substantially foreclosed”; and*
- *“said burner head being in communication with said opening of said base for the flow of gas between the interior of the counter top and said burner head”.*

With regard to the newly added limitations to the claimed invention it is noted that WO 98/30838 (Martin et al.) has a base (22) having a plurality of fingers (20) extending outward of a fuel gas opening (not referenced; Figure 2).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 and 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are vague and indefinite. For example:

- In claim 1, lines 4 and 8, there is no proper antecedent basis for “the interior”.
- In claim 1, lines 3-4 as well as lines 14-16, the recitation “an opening through which gas flows between the interior of a counter top and said burner head” is vague and fails to accurately define the disclosed invention. Gas being fed or flowing to the “burner head” originates from a fuel gas source likely connected via a fuel gas conduit, which may extend, or likely extends, through an interior space located beneath a counter top and then through an opening of the counter top, to then supply fuel “gas” to a burner head. In this manner, the fuel “gas” does not “flow between the interior of a counter top and said burner head”.
- In claim 1, lines 5-6, it is unclear what aspect or element of the claimed invention has “an interior”. Is applicant attempting to claim that each of the plurality of fingers, and therefore to some extent the base, define a recessed volume or interior space which “is not in communication with said opening”?
- In claim 1, lines 8-10, the recitation “*leakage of fluids between the interior of the counter top and the cooktop surface via flow of fluid through said opening and thereafter through said fingers of said base is substantially foreclosed*” is vague and confusing since it is unclear what fluids would necessarily “*leakage of fluids between*

the interior of the counter top and the cooktop surface ". Is applicant attempting to reference fluids, such as fluids from food stuffs, which might flow from above the cook top downwardly through the opening". It is also, unclear how the mounting of the base (50) in a fixed position with respect to the cooktop surface necessarily prevents or forecloses the flow of "fluid" "through said fingers", the fingers having been defined with no structure associated with a likely or potential "flow" therethrough. Is applicant attempting to define, for example, that the base defines a continuous generally impervious planar surface sized to completely cover a counter top opening wherein the base has a plurality of finger portions defined by raised surface areas which extend above the generally planar surface and outwardly from a central fuel gas fitting receiving opening such that fluids from food stuffs are prevented from flowing from above the cook top downwardly through the opening?

Claims 1-7 and 10-13 recite the limitation "said fingers" (see for example, claim 1, line 18). There is insufficient antecedent basis for this limitation in the claim.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: While the specification mentions the term "collar", on page 3, it is unclear which element (i.e. - expanded hole portion 78; externally threaded sleeve 72; shoulder 76; etc.) of the invention necessarily correlates with this element.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6: Rejected under 35 U.S.C. 103(a)

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over **WO 98/30838 (Martin et al.) (of record)** in view of **US006371754 (Haynes) (of record)** or **JP 59-52113 (of record)**.

WO 98/30838 (Martin et al.) shows and discloses the following:

- 1) a burner head (6, or 8) having a plurality of fingers (18) and a peripheral wall with a plurality of “second” ports formed as continuously and substantially evenly spaced slots (34, or 40) in an upper portion of the peripheral wall; and,
- 2) a cap (4, or 6) having a plurality of overlapping fingers which correspond in number to the burner head fingers (see figures 2- 4); and
- 3) a base (22) having a plurality of fingers (20).

WO 98/30838 (Martin et al.) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- a plurality of flame vents including:
 - a recess formed in the cap;
 - an expanded transfer area intermediate the ports.

US006371754 (Haynes) teaches, from the same stovetop burner field of endeavor as **WO 98/30838 (Martin et al.)** providing:

- a plurality of scalloped flame vents (22, 200) formed as a recess and connecting adjacent ports (32) along the peripheral wall of a burner for forming a pilot flame arrangement to aide in propagating a flame between burner ports during, for example, ignition.

JP 59-52113 teaches, from the same stovetop burner field of endeavor as **WO 98/30838 (Martin et al.)** providing:

- a plurality of scalloped flame vents (52, 53, 54) formed as a recess and connecting adjacent ports (51) along the peripheral wall of a burner for forming a pilot flame arrangement to aide in propagating a flame between burner ports during, for example, ignition.

In regard to claims 1-6, for the purpose of aiding propagation of flames between the ports of **WO 98/30838 (Martin et al.)**, it would have been obvious to a person having ordinary skill in the art to modify the recess lip of **WO 98/30838 (Martin et al.)** to include scalloped shaped plural flame vents connecting adjacent ports along the peripheral wall of a burner, in view of the teaching of **US006371754 (Haynes)** or **JP 59-52113 (of record)**.

Claims 7, 10, 11, 12: Rejected under 35 U.S.C. 103(a)

Claims 7, 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over **WO 98/30838 (Martin et al.) (of record)** in view of **Graves (US 1196230) (of record)**.

WO 98/30838 (Martin et al.) shows and discloses the following:

- a burner head (6, or 8) having a plurality of fingers (18, or 20) and a peripheral wall with a plurality of “second” ports formed as continuously and substantially evenly spaced slots (34, or 40) in an upper portion of the peripheral wall; and,

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- a cap (4, or 6) having a plurality of overlapping fingers which correspond in number to the burner head fingers (see figures 2- 4); and
- a base (22) having a plurality of fingers (20).

WO 98/30838 (Martin et al.) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- an indexer carried by the collar and the stem limiting insertion of the stem to at least one predetermined alignment wherein the indexer aligns one upper member in the at least one predetermined alignment with the base and the indexer including a plurality of splines on the collar and the stem interlocking with one another in at least one predetermined alignment.

Graves (US 1196230) teaches, from the same stove type burner field of endeavor as **WO 98/30838 (Martin et al.)** a cook top burner comprising:

- a base (11, 13) for mounting the burner in a cooktop (1);
- at least one upper member defining at least part a plurality of ports on a plurality of fingers;
- a collar (12; figure 4) carried by the base and the collar including a plurality of splines (16a) around the periphery thereof;
- a stem (15) carried by the at least one upper member (20) and the stem including a plurality of splines (17) around the periphery thereof; and
- an indexer (16,16a,17) carried by the collar and the stem limiting insertion of the stem to at least one predetermined alignment, the indexer aligning the at least one upper member in the at least one predetermined alignment with the base, the indexer including the plurality of splines on the collar and the stem interlocking with one another in the at least one predetermined alignment.

In regard to claims 7, 10, 11 and 12, for the purpose of providing different positions relative to the top of the stove, it would have been obvious to a person having ordinary skill in the art to provide **WO 98/30838 (Martin et al.)** with an indexer carried by a collar and a stem limiting insertion of the stem to at least one predetermined alignment wherein the indexer aligns

one upper member in the at least one predetermined alignment with the base and the indexer including a plurality of splines on the collar and the stem interlocking with one another in at least one predetermined alignment, in view of the teaching of Graves. In regard to claims 10 and 12, WO 98/30838 (Martin et al.) provides an ignition element (28) aligned with one adjacent flame port to ensure ignition of a burner flame.

Conclusion

See the attached PTO FORM for prior art made of record that is not relied upon, which is considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to W whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE

Primary Examiner

Art Unit 3749

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